Filed 6/24/19 P. v. Hudnut CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. EDGAR JOHN HUDNUT, Defendant and Appellant.	H045536 (Santa Clara County Super. Ct. No. C1652269)

Following the denial of a suppression motion, defendant Edgar John Hudnut pleaded no contest to transporting methamphetamine for sale in exchange for the dismissal of other charges, one year in county jail, and three years' formal probation. He now appeals the denial of his motion to suppress. We affirm.

I. BACKGROUND

A. Factual Summary[1]

San Jose police officer Sean Delgado testified that shortly after midnight on October 8, 2016, he and his partner, Officer Lucas, were on patrol in the area of Oakland Road and Corie Court in San Jose. While stopped at a red light in their marked patrol car, the officers saw a Cadillac and a minivan parked in the parking lot of a closed business park. Six or seven people were congregated near the driver's side of the Cadillac. Delgado testified that many of the people dispersed as he and Lucas drove into the parking lot. One individual exited the passenger side of the Cadillac, got into the

[1] The facts are taken from the preliminary hearing testimony and Officer Lucas's body camera footage, which was admitted into evidence at that proceeding.

minivan, and drove away. Another sprinted to the nearby creek, leaving behind a bicycle. Defendant exited the driver's side of the Cadillac but remained on the scene.

The officers approached defendant and a woman and instructed them to sit on the curb. They complied. Eleven minutes later, Delgado observed a baggie of methamphetamine in the Cadillac, between the driver's seat and the car door. Delgado saw the baggie when he shined his flashlight down into the driver's window.

At the start of the 11-minute detention, Lucas asked defendant and the woman about the individual who ran and left a bike behind, noting that his decision to flee was suspicious. Lucas asked defendant for his name and date of birth within approximately the first two-and-a-half minutes of the detention. Defendant provided that information and volunteered, "I might have a warrant, but it's not mine, it's my brother's. It's my AKA. So if you do a little investigation it'll come up it's his." Approximately four minutes into the detention, after Lucas asked the woman for her name and date of birth, he radioed the names to dispatch to perform a records check. While waiting to hear back, Delgado and Lucas informed a third officer, who had since arrived on the scene, as to what they had observed. Lucas also patted down the woman and defendant; those searches yielded no evidence.

Approximately seven-and-a-half minutes into the detention, dispatch provided Lucas with physical descriptions, including tattoo information, for the names provided. Lucas asked the woman to describe her tattoos, if any. The officers also asked defendant to show them his forearm. As defendant complied, he stated that he did not have a tattoo on his forearm, and that dispatch was describing his brother. Defendant also said that he and his brother have similar tattoos on their chests, which can confuse police when he doesn't have his identification. After seeing that defendant did not have the documented forearm tattoo, Lucas looked through defendant's wallet for his identification, which Lucas located nine minutes and 21 seconds into the detention. Nine-and-a-half minutes

into the detention, Lucas asked dispatch, "that's on a different PFN?"[2] Five seconds later Lucas stated "no, that was a different P--," before trailing off.

Another individual then approached Lucas and asked about retrieving the bike abandoned by the person who had fled when the officers arrived. Lucas spoke with that individual for about one minute. Immediately after that conversation, at 11 minutes and eight seconds into the detention, Delgado called Lucas over to the Cadillac. Delgado informed Lucas that he had observed what appeared to be a baggie of methamphetamine in the Cadillac.[3] The officers opened the vehicle and retrieved the baggie.

Delgado testified that he read defendant his *Miranda*[4] rights, after which defendant said that he distributes drugs for free and the recipients give him beer or "EBT" cards.

B. Procedural History

A felony complaint filed in Santa Clara County Superior Court on December 2, 2016 charged defendant with possession of methamphetamine for sale (Health & Saf. Code, § 11378; count 1) and transportation, sale, or distribution of methamphetamine (Health & Saf. Code, § 11379, subd. (a); count 2). The complaint alleged that defendant had a prior felony conviction within the meaning of Health and Safety Code section 11370.2, subdivision (c).

On June 29, 2017, defendant filed a Penal Code section 1538.5 motion to suppress the methamphetamine seized from his car and his subsequent statements to police as the fruits of an unconstitutional detention. In July, the court concurrently held a preliminary hearing and a hearing on the suppression motion. On July 17, 2017, the court denied the motion to suppress and held defendant to answer on the charges. The prosecutor filed an information to supersede the complaint.

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[2] Delgado testified that a PFN is a "personal file number," which is assigned when a person is booked into jail.

[3] Defendant does not dispute that the drugs were in plain view.

[4] *Miranda v. Arizona* (1966) 384 U.S. 436.

Defendant renewed his motion to suppress by way of a Penal Code section 995 motion to dismiss filed on August 29, 2017. The trial court denied that motion on September 21, 2017.

On October 16, 2017, defendant pleaded no contest to count 2 in exchange for the dismissal of count 1 and the prior conviction allegation, three years' formal probation, and one year in county jail. In accordance with that agreement, the trial court suspended imposition of sentence, placed defendant on three years' formal probation, ordered defendant to serve a one-year county jail sentence, and dismissed the other charges on January 26, 2018. Defendant timely appealed.

II. DISCUSSION

Defendant challenges the denial of his suppression motion, arguing his detention was illegal at its inception due to lack of reasonable suspicion and, alternatively, was unreasonably prolonged. We reject these contentions.

A. Legal Principles and Standard of Review

The Fourth Amendment, made applicable to the states through the due process clause of the Fourteenth Amendment, protects the individual against unreasonable searches and seizures. (*Mapp v. Ohio* (1961) 367 U.S. 643, 646-660.) It is "the prosecution's burden to prove 'that the warrantless search or seizure was reasonable under the circumstances.' " (*People v. Thomas* (2018) 29 Cal.App.5th 1107, 1115.)

A detention, which is a seizure "of an individual that [is] strictly limited in duration, scope, and purpose" (*In re Manuel G.* (1997) 16 Cal.4th 805, 821), "occurs when the officer, by means of force or show of authority, has restrained a person's liberty." (*People v. Zaragoza* (2016) 1 Cal.5th 21, 56, citing (*Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16 (*Terry*).) Such detentions often are referred to as "*Terry* stops."

A detention or *Terry* stop is reasonable under the Fourth Amendment when it is supported by reasonable suspicion; that is, "when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances,

provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994) 9 Cal.4th 224, 231 (*Souza*).) Reasonable suspicion is a less demanding standard than probable cause, but requires more than "a mere 'hunch' that something is odd or unusual about the person detained." (*Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 780.) " 'The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct.' " (*Souza, supra,* at p. 233.)

The permissible scope of an investigative detention will vary based on the applicable facts and circumstances, but the scope must always be tailored to the underlying justification for the detention. (*Florida v. Royer* (1983) 460 U.S. 491, 500.) In terms of duration, a detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." (*Ibid.*) A detention that is legal "at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope." (*Terry, supra,* 392 U.S. at p. 18.) "For example, [a detention that] continue[s] for an excessive period of time" is unconstitutional. (*Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County* (2004) 542 U.S. 177, 185-186 (*Hiibel*).) "There is no fixed time limit for establishing the constitutionality of an investigatory detention. Rather, . . . [t]he issue . . . 'is whether the police diligently pursued a means of investigation reasonably designed to confirm or dispel their suspicions quickly.' " (*People v. Gomez* (2004) 117 Cal.App.4th 531, 537-538.)

"Where, as here, the defendant challenges the suppression ruling by a motion to dismiss under Penal Code section 995, we review the determination of the magistrate who ruled on the motion to suppress, not the findings of the trial court." (*People v. Fews* (2018) 27 Cal.App.5th 553, 559.) "We defer to the magistrate's factual findings 'when supported by substantial evidence, and view the record in the light most favorable to the challenged ruling.' " (*People v. Wallace* (2017) 15 Cal.App.5th 82, 88-89.) "[W]e . . . exercise our independent judgment in determining whether . . . the challenged

search was reasonable under the Fourth Amendment." (*People v. Shafrir* (2010) 183 Cal.App.4th 1238, 1245.)

B. The Detention Was Supported by Reasonable Suspicion

The People and defendant agree that the police detained defendant when they instructed him to sit on the curb. They dispute whether that detention was justified at its inception and reasonable in its duration.

We begin by considering whether the detention was supported by reasonable suspicion. We conclude that it was. There were specific articulable facts that, considered in light of the totality of the circumstances, gave rise to a reasonable suspicion that defendant was involved in criminal activity.

Officers Delgado and Lucas saw several people congregated near the driver's window of a Cadillac parked in a commercial parking lot in the middle of the night. There were no residences or open commercial establishments in the area. When the officers' presence was noted, most of the people quickly dispersed; one sprinted away, abandoning a bike. Defendant got out of the Cadillac's driver's door but did not flee. The time of night, the location, the evasive actions of defendant's apparent associates, and defendant's association with the vehicle at the center of the unusual activity all supported the officers' suspicion that defendant was involved in a crime. (*Souza*, *supra*, 9 Cal.4th at p. 241 ["time of night is [a] pertinent factor in assessing the validity of a detention"]; *Illinois v. Wardlow* (2000) 528 U.S. 119, 124 [officers may consider "the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation"]; *ibid.* ["nervous, evasive behavior is a pertinent factor in determining reasonable suspicion"].)

Defendant makes much of the fact that he did not run. But his decision to remain was not sufficient to dispel the officers' suspicions in light of the other circumstances. In particular, defendant was not simply a member of the group. He was sitting in the driver's seat of the Cadillac and the other individuals were congregated around the

driver's door. Thus, defendant appeared to be at the center of the group's suspicious activity.

Defendant also contends that the decision of others to flee did not tend to arouse suspicion that he was involved in criminal activity. That argument ignores the totality of the circumstances that the officers confronted. Immediately before the other individuals fled, they were interacting with defendant at a place and time not typically associated with social gatherings—a closed business park parking lot after midnight. (See *People v. Perrusquia* (2007) 150 Cal.App.4th 228, 234 [describing "the flight of a defendant's four companions" as an "immediately highly suspicious fact"].) In that context, the officers were justified in suspecting that defendant was involved in criminal activity.

The cases on which defendant relies do not convince us that his detention was illegal. In *People v. Aldridge* (1984) 35 Cal.3d 473, 476 (*Aldridge*) a group of people was congregated in the parking lot of a liquor store at 10:15 p.m. Drug- and weapons-related arrests were common in the parking lot. When officers drove into the lot, "the group slowly began to disperse. Four men, including defendant, first walked and then ran across" the street. (*Ibid*.) Our Supreme Court held that the factors relied on by the People to establish reasonable suspicion—that "it was nighttime; the incident took place 'in an area of continuous drug transactions'; and defendant and his companions apparently sought to avoid the police"—did not justify the detention. (*Id*. at p. 478.) The court reasoned that "being in the area of a liquor store at 10:15 p.m. . . . is neither unusual nor suspicious"; "that persons may not be subjected to invasions of privacy merely because they are in or passing through a 'high crime area' "; and "that an apparent effort to avoid a police officer" may not justify a detention. (*Id*. at pp. 478-479.) The California Supreme Court has concluded that *Aldridge* is no longer "pertinent authority for determining the propriety of" detentions because it "rested solely on California constitutional grounds." (*Souza, supra,* 9 Cal.4th at pp. 232-233.) The "Truth-in-Evidence" constitutional provision enacted after the detention at issue in *Aldridge* limits

application of the exclusionary rule to federal constitutional violations. (*Ibid*.) Accordingly, *Aldridge* is not persuasive.

In *People v. Wilkins* (1986) 186 Cal.App.3d 804 (*Wilkins*), this court relied on *Aldridge* in concluding that defendant's detention was illegal. Wilkins and another man were sitting in a car parked in a convenience store parking lot at 10:18 p.m. (*Id*. at p. 807.) The men appeared to crouch down when a marked patrol vehicle passed. This court concluded that defendant's subsequent detention was not supported by reasonable suspicion because the relevant factors were "virtually identical [to] those rejected in *Aldridge*." (*Id*. at p. 811.) Given its reliance on *Aldridge*, *Wilkins* is not compelling.

Even if they remained good law, *Aldridge* and *Wilkins* are factually distinguishable. In those cases, the defendants were in commercial parking lots at a time when *the associated business typically would be open*. (*Aldridge*, *supra*, 35 Cal.3d at pp. 476, 478 [liquor store at 10:15 p.m.]; *Wilkins*, *supra*, 186 Cal.App.3d at pp. 807, 811 [convenience store at 10:18 p.m.].) By contrast, here, defendant and others were congregated in the parking lot of a business park at midnight, when all the businesses were closed and there were no nearby residences. The officers and magistrate reasonably could have concluded that such behavior was suspicious.

Defendant's reliance on *People v. Roth* (1990) 219 Cal.App.3d 211 (*Roth*) is likewise misplaced. There, "[t]he sole ostensible ground for the detention was Roth's early morning presence in the deserted parking lot of a shopping center whose businesses were closed. The circumstances were devoid of indicia of his involvement in criminal activity." (*Id*. at p. 215.) Here, defendant was not merely passing through a commercial parking lot whose businesses were closed; he and several others were congregated there. And many of those other individuals fled upon seeing police.

C. The Detention Was of Reasonable Duration

We turn now to defendant's second argument: that the detention, even if reasonable to begin with, was so unreasonably prolonged as to be unconstitutional. We are not persuaded.

During the majority of the detention, officers were attempting to confirm defendant's identity and check for warrants. Those actions were an appropriate part of the original investigation and did not unreasonably prolong the detention.

Ascertaining a suspect's identity is within the proper scope of any *Terry* stop. (See *Hiibel*, *supra*, 542 U.S. at p. 186 ["it is well established that an officer may ask a suspect to identify himself in the course of a *Terry* stop"]; *United States v. Christian* (9th Cir. 2004) 356 F.3d 1103, 1106 ["determining a suspect's identity is an important aspect of police authority under *Terry*"]; *United States v. Silva* (1st Cir. 2014) 742 F.3d 1, 6 ["a police officer conducting an investigatory stop may request the stopped individual to produce identifying information"]; *United States v. Tuley* (8th Cir. 1998) 161 F.3d 513, 515 (*Tuley*) ["ask[ing] for identification [is] a proper action in investigating suspicious activity"].)

A number of federal courts have held that running a warrant check also is within the proper scope of a *Terry* stop, at least so long as the officer's reasonable suspicion has not been dispelled by the time of the check. (See *United States v. Young* (6th Cir. 2012) 707 F.3d 598, 606 ["When a lawful stop occurs, identification and warrant checks are basic police practices"]; *United States v. Villagrana-Flores* (10th Cir. 2006) 467 F.3d 1269, 1275 [holding that performance of a warrant check during a *Terry* stop of an individual suspected of committing a crime does not violate the Fourth Amendment]; *United States v. Kirksey* (7th Cir. 2007) 485 F.3d 955, 958 ["Officer Roy conducted the background checks as part of an investigation necessary to dispel his lingering suspicion for stopping the car, and thus this activity was within the scope of the stop"]; *Tuley*, *supra*, 161 F.3d at p. 515 [20-minute investigatory stop to identify defendant, his reason

for being at a closed gas station and running check to verify an outstanding warrant held constitutional]; *United States v. Fuller* (E.D. Mich. 2015) 120 F.Supp.3d 669, 680 ["when an officer detains a suspect based on reasonable suspicion and that reasonable suspicion is *not* dispelled during the stop, the officer *may* run a warrant check during the stop"]; cf. *Klaucke v. Daly* (1st Cir. 2010) 595 F.3d 20, 26 [finding warrant check was within the scope of detention where defendant's actions aroused suspicion that he may have an outstanding warrant, but declining to "address whether warrant checks are always permissible in the normal course of a *Terry* stop"].)

Here, the officers acted reasonably in requesting a warrant check as part of their investigation. After defendant gave officers his name and date of birth, he volunteered that he "might have a warrant," but claimed it wasn't his. Defendant's statement reasonably could have roused the officers' suspicions that in fact there was an outstanding warrant for defendant's arrest. Thus, the warrant check was reasonable and appropriate.

Defendant argues that his detention continued for several minutes *after* police confirmed his identity and the absence of any warrants. The record, viewed in the light most favorable to the magistrate's ruling, does not support that assertion. Rather, it appears that Lucas never obtained definitive results on the warrant check. Dispatch initially provided Lucas with information about someone other than defendant, possibly defendant's brother. The officers determined that dispatch had identified the wrong individual by verifying that defendant did not have a forearm tattoo. Lucas then sought to ascertain defendant's identity by looking for his identification. Lucas located defendant's driver's license nine minutes and 21 seconds into the detention. Moments later, Lucas communicated with dispatch again about personal file numbers. Nothing in Lucas's final communication with dispatch suggests that he received definitive confirmation that defendant had no outstanding warrants. Instead, it appears the investigation into defendant's identity and the existence of any outstanding warrants

continued throughout the detention. Accordingly, the 11-minute duration of the detention was not unreasonable.

Defendant also argues that the patsearch—which he concedes did not extend the detention beyond the time necessary to confirm his identity—was illegal. "Since we conclude that [the officers] had reasonable grounds to detain defendant" and that the detention was not unreasonably prolonged, we "need not consider whether the pat-search was justified because it yielded nothing incriminating" and did not extend the duration of the detention. (*People v. Fisher* (1995) 38 Cal.App.4th 338, 345-346.)

III. DISPOSITION

The judgment is affirmed.

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ELIA, ACTING P. J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MIHARA, J.

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